

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LARRY RODRIGUEZ,

Plaintiff,

vs.

9:06-CV-1288

GLENN S. GOORD; RONALD BACKE, Legislation  
Dept.; THOMAS EGAN, Director of Grievance;  
BELLING, D.S.S., Auburn Correctional Facility;  
LESTER WRIGHT, Chief Medical Examiner;  
JOHN NUTTAL, Deputy Commissioner of Programs;  
RICHARD LAUX, P.A., Medical Dept., Auburn; and  
HAROLD SMITH, Director of Mental Health,

Defendants.

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APPEARANCES:

LARRY RODRIGUEZ  
99-A-3278  
Plaintiff, *pro se*

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Presently before the Court is an amended complaint filed by plaintiff Larry Rodriguez. Dkt. No. 5. This amended complaint was filed by Rodriguez in compliance with the Decision and Order issued by this Court on November 17, 2006 ("November Order"). Dkt. No. 4.

In its November Order, the Court advised plaintiff that his original complaint failed to satisfy the basic pleading requirements of the Federal Rules of Civil Procedure. *Id.* at 4. Plaintiff was advised that he must allege specific facts of personal involvement for each defendant. *Id.* at 5, 8. The November Order advised plaintiff that he must demonstrate an

actual injury to establish a claim for denial of access to the courts. *Id.* at 5. Plaintiff was also advised that he must allege facts that demonstrate deliberate indifference to his serious medical needs and that he must allege that he has exhausted available administrative remedies.<sup>1</sup> *Id.* at 7.

In his amended complaint, plaintiff alleges multiple violations of his constitutional rights, including imposition of ex post facto punishments, denial of due process, inadequate medical care, and denial of adequate religious meals. Dkt. No. 5.

In addition to the defendants named in his original complaint, the amended complaint names "G. McPartland," "Dr. Weinstock," and "Commissioner of Corrections"<sup>2</sup> as defendants. *Id.* at 1. Plaintiff states that Dr. Weinstock is employed at Five Points Correctional Facility. *Id.* at 2. The Court notes that Five Points Correctional Facility is located in the Western District of New York. Venue over this claim is therefore not proper in this District. Accordingly, Dr. Weinstock is therefore dismissed as a defendant in this action.

In light of plaintiff's good faith effort to comply with the November Order and the Second Circuit's ruling in *Phillips v. Girdich*, 408 F.3d 124, 128 (2d Cir. 2005), the Court accepts plaintiff's amended complaint for filing.

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<sup>1</sup> "New York State Attorney General" was dismissed by the November Order as a defendant because plaintiff did not set forth any claims against it. *Id.* at 9.

<sup>2</sup> The Court notes that plaintiff does not name previously named defendant "Glenn S. Goord" in his amended complaint and instead names "Commissioner of Corrections." Based on Glenn S. Goord's position as the Commissioner of the New York Department of Correctional Services and the similarity in claims against these defendants, the Court will assume that plaintiff intended to name Glenn S. Goord in his amended complaint.

THEREFORE, it is

ORDERED, that

1. Dr. Weinstock is dismissed as a defendant in this action;

2. The Clerk is to revise the docket to include "G. McPartland" as a defendant in this action;

3. The Clerk shall issue summonses naming the current defendants and forward them, along with copies of the amended complaint, to the United States Marshal for service upon the named defendants, together with a copy of this Order.<sup>3</sup> The Clerk shall also forward a copy of the summons and amended complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order;

4. A formal response to plaintiff's amended complaint must be filed by the defendants or their counsel as provided for in Rule 12 of the Federal Rules of Civil Procedure subsequent to service of process on the defendants;

5. All pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of it was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be returned, without processing.** Plaintiff must comply with requests by the Clerk's Office

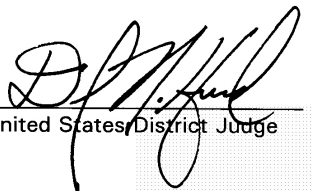
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<sup>3</sup> Plaintiff was granted leave to proceed with this action *in forma pauperis*. Dkt. No. 4 at 3.

for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in his address; his failure to do so will result in the dismissal of this action.** All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court; and

6. The Clerk shall serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

  
United States District Judge

Dated: January 8, 2007  
Utica, New York.